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UNITED STATES DISTRICT COURT
Honorable Stanley A. Bastian

United States,

Plaintiff,

v.

Andrei S. Borgheriu,

Defendant.

No. 4:22-cr-06040-SAB-1

Reply to Motion in Limine
Regarding Interest Rate Evidence

I. REPLY

Contrary to the United States’ response, the defense is not re-litigating the Court’s prior orders. The defense is also not suggesting the government cannot “accurately describe” EIDL terms (the contract is what it is, within its four corners). Instead, the issue is about ensuring the United States does not attempt to try its circumstantial case under a different standard for foundation and relevance. Two points illustrate the problem.

First, “low interest,” as the government proffers through an isolated narrative in the Code of Federal Regulations, is *relative* and *subjective*. In other words, “low interest” based on what and compared to what? Counsel appreciates that the Court has concluded that Ms. McHard’s testimony is not proper on this point. But that means that neither is Mr. Brown’s. He is not a mortgage expert or an accountant, and his CV reveals no understanding of market data that would be helpful to the jury. The mere reference to an undated, narrative CFR does not make an opinion of “low interest” relevant to *this case*, absent foundation of the value of an EIDL interest rate compared to that available to a borrower within an entire lending industry.

Second, and more importantly, is how the government will likely try to play the issue of interest rate at trial. The government suggests, innocuously:

18 charged with defrauding. Accurately describing the EIDL program as having a “low”
19 interest rate does not “permit the government to present speculative argument of
20 motive or opportunity.” ECF No. 115 at 2. To the contrary, it is appropriate for the
21 United States to present testimony that accurately describes the EIDL program.

4 ECF No. 118, pg. 3 (highlights added). Yet, the concern is that when we get to trial,
5 the government will start arguing (incorrectly) that “Mr. Borgheriu took advantage of a
6 low-interest program instead of qualifying for or taking out a mortgage.” That
7 foundationless *argument* brings the “low interest” testimony far over the line of
8 “descriptive” and into the realm of wholesale speculation.¹ The government cannot
9 make a motive argument without first establishing a foundation, i.e., that the EIDL
10 interest rate would have been a benefit over a mortgage. No evidence has been
11 produced for such a foundation, there is no inherent accuracy to the testimony, and it is
12 expected that no foundational testimony will be offered at trial.

16 ¹ For example, it does not even appear to be an accurate characterization of the EIDL
17 program as compared to the mortgage market at the time the loan was applied for. In
18 August of 2021, when the EIDL at issue was disbursed, the average 30-year mortgage
19 rate fell somewhere between 2.77% and 2.87%. See [Weekly Mortgage Rates](#), Bus. Insider
(last visited January 29, 2025).

II. CONCLUSION

The government's brief misses the root equality of the defense request. In light of the Court's prior rulings, the appropriate course of action means taking subjective and misleading interest rate testimony off the table for *both sides*.

Dated: January 29, 2025.

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SERVICE CERTIFICATE

I certify that on January 29, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will serve all counsel of record.

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REPLY TO MOTION IN LIMINE – INTEREST RATES